United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

534

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 23, 799

UNITED STATES OF AMERICA

- vs -

DENNIS S. GIST,

Appellant.

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

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AUTHORITIES

*CASES CHIEFLY RELIED ON.

STATEMENT OF POINTS

1. Evidence was insufficient to support conviction of Rape and Sodomy

2. Jury's verdict was speculative.

3. Jury's verdict was based on conjecture, surmise, bias and prejudice.

4. The Court erred when it did not grant appellant's motion for judgment of acquittal or his motion for acquittal N. O.V.

5. It was error to give flight Instruction.

6. It was error not to give lesser included offense instruction on Sodomy count.

7. It was error to allow the jury to speculate when evidence did not support crime charged.

8. Can conviction of crime stand when all the essential elements of cdimes have not been proved by the Goverrment?

This case has not previously been before this Court.

Peferences to Pulings - None

STATEMENT OF QUESTIONS PRESENTED

1. Can a conviction for rape be sustained when there is absolutely no force and nothing of substance to induce fear to transform an apparent consent into a legal non-consent?

2. Can the court allow the jury to speculate guilt without evidence or stray into pure surmise, bias or prejudice?

3. Was flight instruction error when appellant returned, voluntarily to scene within 20 minutes?

4. Is it still the law, that there can be no conviction of sodomy on circumstantial evidence unless the only possible inference to be derived from it is that of guilt?

5. Should motion for judgment of acquittal be granted when there is no evidence on which reasonable mind might fairly conclude guilt beyond a reasonable doubt.?

6. When the complaining Witness is under oath and testifying can government be allowed to rehabilitate that witness outside the hearing of the appellant and the jury? and should the fact that the complaining witness lied under oath concerning this be kept from the jury?

SUMMARY OF ARGUMENT

Evidence could not be reasonably regarded as proving beyond a reasonable doubt that appellant was guilty of rape.

If there is no evidence to support a finding of guilt as charged Court should grant motion for judgment of acquittal.

When there is no meaningful flight it is error to give flight instruction

Jury must not be allowed to speculate guilt without evidence nor may they decide case on bias or prejudice..

There can be no conviction of Sodomy on circumstantial evidence unless the only possible inference to be derived from it is that of guilt.

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from a Judgment of conviction of the United States District Court for the District of Columbia of the offenses of Rape (22 D.C. Code 2801) and Sodomy (22 D.C. Code 3502). The jurisdiction of this Court is invoked under the provisions of Section 1291, Title 28, U.S. Code.

STATEMENT OF THE CASE

On January 29, 1969, the Appellant, Dennis S. Gist and another young man, one Henry Bush, Jr. were arrested at the Wingate House, 4660 Nichols Avenue, S. W., Washington, D. C. and charged with Rape upon the complaint of Mattie G. Stevens.

The arrest grew out of a series of events that began earlier that evening commencing at the Eastover Shopping Center in Prince George's County, Maryland, just over the District line and culminating in the lobby of the Wingate House, a large high rise and garden apartment complex.

On February 25, 1969, both the Appellant and co-defendant Bush appeared before the United States Commissioner and a preliminary hearing was conducted resulting in a finding of probable cause and both Appellant and co-defendant, Bush were bound over for action of the Grand Jury.

On March 19th, 1969, both Appellant, Dennis S. Gist and co-defendant Bush were presented by the Grand Jury on Rape, Sodomy, Robbery and 18 USC 1201 (Kidnapping) and a Six Count Indictment was filed on April 21, 1969, charging Appellant and co-defendant Bush with one count each of Kidnapping, Rape, Sodomy and Robbery. Both Appellant and co-defendant Bush entered pleas of not guilty and after Motions were heard by the Court on behalf of the Appellant this matter came on for Trial by Jury on August 19, 1969, before the Honorable United States District Court Judge, Oliver Gasch.

THE GOVERNMENT'S CASE

At the Trial, the Government put on as its first witness, Mattie G. Stevens, the complaining witness. Her testimony up until the noon recess was vague and unspecific and purported to give an account of the events of the evening of January 29, 1969. Her account of the events (TR 18-60) were that she was allegedly abducted in front of a liquor store in a very large shopping center known as Eastover Shopping Center, where she had just seen a guard while going to the liquor store to get some change so she could do her laundry. That this man sitting in a Ford automobile got out of the car and somehow circled behind her, grabbed her and put her in the automobile. Then she testified the car left the Eastover Shopping Center, but she did not know where (TR 34), but it was a wooded area. Next she testified that she was taken from the wooded area to the Wingate House, but returned to the wooded area where she then had intercourse with the passenger and then had intercourse with the driver and then stated that acts of Sodomy were performed involving both the driver and the passenger. She never referred to Appellant or co-defendant Bush in any way other than the driver and passenger and it was difficult to determine who she was referring to. She testified that Appellant and co-defendant had some discussion between them about a gun (TR 51) but was unable to relate what was said or who said it. Except for her account of how it was that she came to be in the automobile at

the Eastover Shopping Center, there was no testimony given as to any force, either actually or threatened. There was no testimony given by the complaining witness of any statements, or any actions by the Appellant or the co-defendant Bush that would put her in fear of death or serious bodily harm. As a matter of fact, her testimony up to this point except for her bizarre account of how she came to be in the automobile did not even hint at any criminal activity.

After the noon recess her testimony became remarkably sharp and specific for example for the first time she referred to co-defendant Bush as Mr. Bush and Appellant as Mr. Gist (TR 61) and she knew exactly where the automobile went when it first left the Eastover Shopping Center "Well, we went -- we came into Washington" (TR 62). She denied knowing either Appellant or co-defendant Bush and denied socializing with either one of them. She also denied knowing Appellant's brother or Robert Watkins.

On cross examination, Mattie G. Stevens was asked if she had discussed the case with anyone during the noon recess and she denied discussing the case with anyone (TR 66-67) whereupon the prosecutor requested a Bench Conference and advised the Court that he had in fact talked with Mattie G. Stevens during the noon recess. This was kept from the Jury and they were never aware of the untruthful statement made by the witness. Throughout the remainder of the complaing witness's testimony as on direct she gave no testimony of any force used against her or any threat of force at all.

To best characterize her testimony, it was liberally sprinkled with such remarks as "I'm not sure, I don't know, I guess, I don't remember".

The complaining witness testified that after the alleged assault she was taken to the lobby of the Wingate House where she managed to break away and jump behind the desk.

A hearing out of the presence of the Jury to determine whether Appellant should have been given Miranda warnings before he was aked certain questions. The Court ruled that the Miranda warnings were not required under the circumstances (TR 261) and permitted Charles Green to testify. Green testified to the events that took place at the Wingate House on the night of January 29, 1969. Wallace Nelson Hawkins and James D. Sutton also gave testimony on the events at the Wingate House. Their testimony was essentially that at some point after Appellant, co-defendant Bush and the complaining witness got to the Wingate House she left the Appellant and co-defendant Bush and leaped over the desk in the lobby and complained of being raped. There was testimony that Appellant left the Wingate House, but all the testimony on this point was that Appellant returned to the Wingate House in 20 minutes.

The Government put on Medical Testimony which indicated that the Government's Doctor did not examine the complaining witness until several days after the alleged offense and while he found that she had completely recovered from her experience in child birth he testified that he noted some vaginal tenderness but conceded that

this could be the result of vigorous intercourse. There were no lacerations noted nor abnormal marks on the complaining witness's body.

After calling an agent from the FBI who testified as to certain test he made which indicated that seminal fluids were present on Appellant's and the complaining witness's clothing, the Government called members of the Metropolitan Police Department who responded to the Wingate House, moved its exhibits into evidence and rested.

Defense Counsel moved for acquittal and argued the point of whether or not the complaining witness's untruthful statement made under oath should be kept from the Jury. The Motions for Acquittal were denied by the Court (TR 466).

DEFENSE

The defense was consent. Appellant testified that he previously knew the complaining witness, that he had been out with her on several occasions prior to January 29, 1969. That he had been intimate sexually before January 29, 1969, that he and the complaining witness had been together at the apartment of Robert Watkins, that she had given him a picture of her after first cutting a man off of the photograph. That he did have intercouse with her on January 29, 1969, but it was with her consent. That no force of any kind was used or contemplated with respect to the complaining witness. That from the very beginning when she recognized him

in Eastover Shopping Center and voluntarily got in the car with him until they got to the Wingate House there was nothing unusual. That he was completely shocked at the complaining witness's conduct after they got to the Wingate House. That he left the Wingate House, but returned there voluntarily within 20 minutes whereupon he was arrested.

Mr. Courts, manager of the Eastover Shopping Center Liquor Store testified that he saw the Appellant and complaining witness in front of the Liquor Store and that they appeared to be kissing, that there was nothing unusual about what took place and there was absolutely no evidence of Foul Play.

Mr. Mitchell testified that he happened to be going to the Liquor Store in Eastover Shopping Center and that he saw the complaining witness leaning over into the window of Appellant's automobile engaged in what appeared to be a friendly conversation.

Appellant's brother and Mr. Watkins testified that the Appellant and the complaining witness knew each other and that they had seen them together prior to January 29, 1969.

The Doctor who first examined the complaining witness testified that there was absolutely no evidence of trauma and that there appeared to be no evidence of anything physically or mentally abnormal with respec t to the complaining witness. This Doctor examined the complaining witness very shortly after the alleged offense and while subpoened originally by the Government did not testify for the Government.

An expert from the FBI testified that he found no evidence of fibre or intermeshing of hair.

Renewal of Appellant's Motion for Acquittal was heard and denied by the Court after the Government had put on rebuttal which did nothing to strengthen its case in chief.

Argument was made to the Jury and after the Jury was charged by the Court it retired to deliberate.

The Jury returned a verdict of not guilty on all counts except count 5 in favor of co-defendant Bush. The Jury found Appellant not guilty on the Kidnapping and Robbery counts, but guilty of Rape and Sodomy.

A Motion for Judgment of Acquittal N.O.V. or in the alternative, for a New Trial was filed and denied by the Court.

Appellant was sentenced to three years to fifteen years on count two and three years to ten years on count four.

From this conviction and sentence Appellant appeals.

ARGUMENT I

THE GOVERNMENT DID NOT MAKE OUT A CASE OF RAPE AS A MATTER OF LAW.

It is Appellant's contention that as a matter of Law the Government did not make out a case of Rape upon the testimony of the complaining witness.

As was urged upon the Court below Farrar v United States, 275 F2d 868 (Dec. 11, 1959) is the controlling authority in this case now on appeal.

Looking at the factual situation in Farrar v. United States, supra and the factual situation in the instant case it becomes abuntently clear that the testimony relied on in the Farrar case was much stronger than the testimony in this case and the Court held the Government failed to prove a case of Rape.

When we examine the testimony of the complaining witness in its entirety (TR 18-222) in the Government's case in chief. When we look at the affirmative testimony of the complaining witness as to what they did to her during the time involved in the alleged offense we inescapeably have to come to the conclusion that her testimony did not make out a case of Rape.

First, let us look at her description of how the events of January 29, 1969, began in Eastover Shopping Center.

The complaining witness testified that she was going to the Liquor Store in the Eastover Shopping Center to get some change

so she could do her laundry in a laundramat in the same shopping center a few stores down from the liquor store. She observed a Security Guard in a telephone booth on her way to the liquor store and his unmarked car parked. She also observed a car parked in front of the liquor store and saw a man turn a bottle up. Then completely unexplained by the complaining witness, the passenger in this automobile got out and circled behind her, although she is walking in the direction of the automobile in this well lighted Shopping Center, grabbed her from the rear and after a brief struggle put her in the automobile. She further testified on this point that she made no outcry, did not scream out, made no attempt to attract the attention of anyone in the Shopping Center even though she testified that she had just seen a Security Guard. Moreover, the complaining witness testified that the liquor store was open and lighted, there were people in the liquor store and people going in and out of the liquor store and that she saw a maroon Corvair automobile pull right up behind the car she was in and she even testified that one of the men got completely out of the car for a few minutes.

Significantly she never gave any testimony either on direct or cross-examination as to any one thing the Appellant said to her in the way of threats or any menacing action on his part or anything for that matter to induce fear of any kind, nor did she testify as to any thing that co-defendant Bush said or did that would induce fear of any kind.

She next tells us that they left the shopping center and went to a playground area which she did not know where at first, but after conferring with the U.S. Attorney stated it was in Washington, D. C. Absolutely nothing was testified to by the complaining witness as to what Appellant or co-defendant said or did while going to this playground area. After they arrived at this playground area, co-defendant Bush is supposed to have gotten out of the car and Appellant in some fashion was suppose to have his hand in her underclothing. However, co-defendant Bush returned shortly and according to complaining witness they drove to the Wingate House, but did not stop and returned to the playground area.

The testimony continues after they returned to the playground area, co-defendant Bush got out of the car and she and Appellant had intercourse. But she did not and we emphasize did not testify that her taking part in the intercourse was induced by threats or by words of any sort.

She further testified that co-defendant Bush returned to the automobile and Appellant unlocked the doors to the car, then shortly thereafter, co-defendant Bush is supposed to have had intercourse with her and Appellant was supposed to have made her commit Oral Sodomy upon her by making her take his private part as she put it into her mouth. But again we emphasize she did not testify that her taking part in any of this activity was induced by threats or by words of any sort.

It is true that the complaining witness made some mention

of a gun but according to her testimony this remark about a gun was after all the above-described events had allegedly taken place and according to her they had returned to Eastover Shopping Center (TR 48-51).

There of course, was no other mention of a gun or a weapon of any kind.

Thereafter according to the c mplaining witness they returned to the Wingate House and after they got to the doorway of the Wingate House she alledgedly broke away, jumped over the desk and told the Clerk there she had been Raped by the two men she was with at the door. Querie, why couldn't she have made her complaint to the guard who was at the door, armed and conversing with Appellant and co-defendant Bush?

In the Farrar Case Supra, the complaining witness testified that the Appellant in that case had a knife in his hand, however, there was no knife and the Court stated at page 869:

> "... It is nearly or quite incredible that Appellant could have used a knife as extensively as the girl said he did without her ever seeing it. It is so nearly incredible that a reasonable inference, if not the only reasonable inference, from the testimony of the girl herself, is that appellant did not use a knife. And there is no evidence that her participation in intercourse was induced by any other kind of force or threat."

The Court in denying Appellee's petition for rehearing in banc in the Farrar Case Supra stated on pago 876:

> "... As I understand the law of rape, if no force is used and the girl in fact acquiesces, the acquiescence may nevertheless be deem to be non-consent if it is induced by fear; but the fear, to be sufficient for this purpose, must be based upon something of substance; furthermore the

> fear must be of death or severe bodily harm. A girl cannot simply say "I was scared", and thus transform an apparent consent into a legal non-consent which makes the man's act a capital offense. She must have a reasonable apprehension, as I understand the law, of something real; her fear must be not fanciful but substantial".

In this case apparent consent was not transformed into legal non-consent; the Government did not make out a case of Rape and the Court should have granted Appellant's Motion for Acquittal at the end of the Government's case.

ARGUMENT II

IF THERE IS NO EVIDENCE ON WHICH A REASONABLE MIND MIGHT FAIRLY CONCLUDE GUILT BEYOND A REASONABLE DOUBT, MOTION FOR A DIRECTED VERDICT OF ACQUITTAL MUST BE GRANTED.

The evidence in this case was insufficient to sustain conviction on any of the charges against Appellant as set forth in the indictment. In this connection, Appellant respectfully refers this Honorable Court to his Points and Authorities in support of his Motion for Judgment of Acquittal Notwithstanding the Verdict, or in the Alternative, for a New Trial which is part of the record herein and Appellant incorporates it in this Argument by reference.

In Cooper v. United States, 218 F2d 39 (Aug 5, 1954) the Court held citing Curley v. United States, 160 F2d 229 (Jan 13, 1947),Certiorari denied, 331 U.S. 837, 67 S. Ct. 1511, 91 L. Ed. 1850 (194-) at page 41.

> "... The applicable rule is laid down in Curley v. United States (Citation omitted). We there pointed out that in the trial of criminal cases there are functions for the Judge and functions for the Jury; that the Judge must not impinge upon the functions of the Jury; that the verdict is for the Jury upon the facts and the findingsof the facts is for the Jury; that, however, the Judge must not allow the Jury to speculate guilt without evidence or to stray into pure surmise, bias or prejudice. If upon the evidence there is a question whether the accused is guilty or innocent, the jury must decide the question; the Judge cannot decide such a question. And the Judge cannot decide that upon the evidence the accused is guilty and direct a verdict accordingly; a finding of guilt is for the Jury alone. Only when there is upon the evidence no doubt that the verdict must be not guilty can the Judge "take the case from the Jury"; only then can he direct a verdict. The line between a verdict of guilty and one of not guilty is, of course, at the point where a reasonable mind has a reasonable doubt of the accused's guilt. Hence we said in the Curley case that,

> if a Judge is of opinion that upon the evidence a reasonable mind could not find guilt beyond a reasonable doubt he must not let the Jury act, because to do so would be to let it speculate without evidence adequate in law. We expressed it thus:
>
> "The true rule therefore, is that a trial Judge, in passing upon a motion for directed verdict of acquittal must determine whether upon the evidence, giving full play to the right of the Jury to determine credibility, weigh the evidence, and draw justifiable inference of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt. If he concludes that upon the evidence there must be such a doubt in a reasonable mind, he must grant the motion; or, to state it another way, if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt, the motion must be granted."

There can be no question in this case that the Judge should have not allowed this case to go to the Jury. On substantially the same evidence the Jury found Appellant and co-defendant Bush not guilty of Kidnapping and Robbery and thus effectively ruling out force if any, there was in the case. On substantially the same evidence , the Jury found Appellant guilty of Rape and co-defendant Bush, not guilty. On substantially the same evidence the Jury found Appellant guilty of Sodomy and could not agree on a verdict with respect to co-defendant Bush.

In order to reach verdicts as the Jury did in this case, there is only one conclusion you can make and that is the Jury was allowed to speculate, guilt without evidence or stray into pure surmise, bias or prejudice.

There was no evidence on which a conclusion of guilt beyond a reasonable doubt could be made and the Court erred when it did not grant Appellant's Motions for Acquittal respectively at the conclusion of the Government's case, at the conclusion of the entire case or notwithstanding the verdict.

IT WAS ERROR TO ARGUMENT III

IT WAS ERROR TO GIVE FLIGHT INSTRUCTION WHEN FACTS CLEARLY SHOW THAT THERE WAS NO MEANINGFUL EVIDENCE OF FLIGHT.

The evidence indicates that Appellant left the Wingate House after the complaining witness made her complaint against him and the co-defendant Bush. The evidence also clearly shows that in approximately twenty minutes (20 minutes) the Appellant returned to the Wingate House voluntarily of his own accord and was immediately placed under arrest.

The Government informed theCourt that it was not going to request a flight instruction, but it was going to argue flight (TR 700 et seq). The Court held if the Government was going to argue flight, it would instruct on flight and modify the standard flight instruction by the language of the Austin v. United States, 414 F2d 1155, May 27, 1969, holding. Appellant's Counsel tried to state to the Court that in asmuch as Appellant returned within a reasonable time it would be consistent with saying that he really didn't leave, that is to say there was no meaningful flight (TR 702). Nevertheless the Court held it would give a flight instruction and Appellant's Counsel could argue his conclusions to the Jury. The Court gave a flight instruction (TR 1018-1019) and at TR 1042 appears the following:

"MR. HARRIS: And I would like to say for the record that was not my position on the flight instruction.

THE COURT: All right, Sir, it is noted.

In United States of America v. Vereen, Slip Opinion No. 23,173

decided May 13, 1970, this Court held on page 4 of the Slip Opinion:

> "... In the course of her charge, the trial judge included the standard instruction on flight. Flight instructions have received substantial criticism in recent years, chiefly because the risk is great that an innocent man would respond similarly to a guilty one when a brush with the law is threatened (Citations omitted)
>
> This Court has recently considered the issue in Austin v. United States, 134 U.S. App. D.C. 259, 414 F2d 1155 (1969). In the Austin case, Appellant was observed the day following the crime by the victim and an accompanying police officer. Appellant moved away at a rapid pace, and the officer was required to enlist the aid of passers-by eventually to catch up with appellant and arrest him in his apartment. The Court found the instruction on flight erroneous under the circumstances, but not, absent an objection plain error affecting substantial rights within the meaningof Rule 52, Fed. R. Crim. P.
>
> In the instant case, the record is barren of meaningful evidence of flight by appellant. After the crime, appellant left the scene, remained within a one block radius for approximately 30 minutes, and then returned to speak with the victim, at which point the arrest occurred. In these circumstances, the flight instruction constituted plain error under Fed. R. Crim. P. Rule 52(b).
>
> These errors at trial, certainly when taken in combination on a record wherein appellant presented a serious defense, require reversal and remand for a new trial."

Appellant submits that it was plain error for the Court to give a flight instruction under the circumstances of this case and his conviction should be reversed.

ARGUMENT IV

TESTIMONY ASSERTING SODOMY MUST BE SUBJECTED TO THE MOST CAREFUL SCRUTINY.

There was only the testimony of a single witness to statutory offense of Sodomy and this should be received and considered with great caution. It is still the Law, however, that there can be no conviction of Sodomy on circumstantial evidence unless the only possible inference to be derived from it is that of guilt.

The Court stated in Kelly v. United States 194 F2d 150 (Jan 10, 1952) on page 153:

> "... The case before us lies in a field in which our courts have traditionally been unusually skeptical toward the accusation. This has been true of all the so-called sex offenses. Lord Hales' epigram concerning a charge of rape was written in 1680. It is established that testimony asserting sodomy must be subjected to the most careful scrutiny. Blackstone had the following to say about it: "what has been observed, especially with regard to the manner of proof, which ought to be more clear in proportion as the crime is the more detestable, may be applied to another offense, of a still deeper malignity; the infamous crime against nature, committed either with man or beast. A crime which ought to be strictly and impartially proved, and then as strictly and impartially punished. But it is an offense of so dark a nature, so easily charged, and the negative so difficult to be proved, that the accusation should be clearly made out: for, if false, it deserves a punishment inferior only to that of the crime itself.

The only testimony at the trial concerning Sodomy was given by the complaining witness, except that Appelant's testimony was that it never happened and co-defendant Bush when asked on cross-examination denied that he had committed such an offense. Appellant's explanation of the seminal fluid on Complaining witness's blouse was consistence with her request that he not

ejaculate in her because she did not want to become pregnant again. Complaining witness's description of the alleged offenses of Sodomy are void of any details, except the act itself. If we are to believe her, nothing, no conversation, no acts, no words of any sort, no details as to how this came about. As it appears in the record, its only an additional accusation to bolster her claim that she had been Raped.

It is obvious from the Jury's verdict that they found the complaining witness unworthy of belief. We must remember, that both Appellant and co-defendant Bush were charged with, Kidnapping, Rape, Sodomy and Robbery. The Jury rejected the charge of Kidnapping and Robbery as to both Appellant and co-defendant Bush, it acquitted co-defendant Bush on Rape and could not agree on a verdict against Bush on the Sodomy Count which was dismissed by the Government. This was done on substantially the same evidence as to both men.

It is submitted that the evidence was insufficient to sustain conviction of Appellant for Sodomy.

Moreover, it was error for the Court to refuse to give instruction on lesser included offense (TR 1008). See Gaither v. United States, 251 A2d 644 (March 21, 1969).

Finally, the Court granted Appellant's Motion for a Bill of Particulars in accordance with D.C.C.E. Section 22-3502 but ruled it was to be furnished at trial. Such a Bill of Particulars was not furnished at trial.[1]

As aforesaid the evidence was insufficient to sustain after careful scrutiny.[2]

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1. At the Preliminary Hearing, the complaining witness's testimony was as follows:

Preliminary Hearing Transcript P. 9.

"Q. And this was with whom?
A. With the driver. And in the meantime, the passenger made me do oral sodomy on him. Well, I didn't swallow it so it came out on my blouse.
Q. And did the police take the blouse later?
A. Yes. and in the meantime -- Well, after the oral sodomy was over, you know, he kept biting me all over again, you know, and he did the same thing to me, you know, sodomy, and he was biting me too."

2. Appellant's Motion for Grand Jury Minutes was also granted to be furnished at Trial, however, this was not furnished also.

Respectively Submitted:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief was served on the United States Attorney for the District of Columbia, United States Courthouse, Washington, D. C., 20001, this _____ day of _____, 1970.

_____
ROBERT A. HARRIS